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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 8th June, 1953

S.R.O. 1197.—Whereas the election of Thakur Narain Singh, as a member of the Legislative Assembly of the State of Ajmer, from the Masuda constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Gulab Chand Chordia, S/o Shri Ghisalal, Bijainagar, District Ajmer;

And whereas, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, STATE OF AJMER

ELECTION PETITION NO. 241 OF 1952

CORAM:

Shri J. D. Sharma—*Chairman.*

Shri C. Jacob,

Shri S. N. Agarwal—*Members of the Election Tribunal.*

Shri Gulabchand Chordia son of Ghisalal, resident of Bijainagar represented by Shri Mukat Beharilal Bhargava Advocate, Ajmer—*Petitioner.*

Versus

1. Thakur Narain Singh son of Thakur Vijai Singh Istimrardar of Masuda, represented by Shri B. P. Beri Advocate.
2. Shri Murarilal Mansinghka, General Manager Bijai Cotton Mills, Bijainagar.
3. Shri Madansingh Advocate, Station Road, Ajmer.
4. Shri Kanhaiyalal Bhatewara, Bijainagar.
5. Shri Suryamal Maurya, Maurya Bhawan, Beawar.
6. Shri Gaindalal Chamar of Bijainagar.
7. Shri Kesavlal Bhambi of village Masuda—*Respondents.*

JUDGMENT

The respondents contested the election to Ajmer Legislative Assembly from Masuda Constituency in which respondent No 1 Thakur Narainsingh Istimrardar of Masuda was declared elected

The petition was presented before the Secretary Election Commission, on the 3rd May 1952 and it bears an endorsement that it was presented by Shri Rikhabchand who had been duly authorised in this behalf by the petitioner.

The election of respondent No. 1 is challenged in the petition mainly on the ground that he as the Istimrardar of Masuda was holding an office of profit under the Government of India within the meaning of Article 102 of the Indian Constitution read with Section 17 of the Government of India Part C States Act, 1951 and as such he was disqualified to stand and contest the election to the Legislative Assembly of this State. At the time of the scrutiny of the nomination paper of the candidate the petitioner had challenged the candidature of respondent No. 1 on this ground but the Returning Officer rejected this objection and accepted the nomination of respondent No. 1. The contention of the petitioner now is that the nomination of respondent No. 1 was wrongly accepted and on that account the result of the election has been materially affected.

Out of the seven respondents only respondent No. 1 has contested the petition. He pleaded that as the Istimrardar of Masuda he was not a holder of an office of profit within the meaning of Article 102 of the Constitution of India. He has also raised a plea that the petition was not maintainable as the petitioner was not an elector.

On the pleadings following issues were framed:—

1. Does the respondent No. 1 as Istimrardar of Masuda, hold an office of prof within the meaning of Article 102 of the Indian Constitution?

2. Is the petition not maintainable for reasons stated in para. 9 of the written statement of the respondent No. 1?

3. To what relief, if any, is the petitioner entitled?

The findings of this Tribunal are as under:—

Issue No. 1.—The expression "Office of Profit" is not defined in the Constitution or the Representation of People Act, but it is not a term of art and its meaning and import are well understood. The essential characteristics of an "Office of Profit" are:—

(1) It involves an appointment by the State in one form or the other.

(2) It carries emoluments payable mostly periodically.

(3) Is for a limited period

(4) Is terminable.

(5) Is not assignable.

(6 Is not heritable.

(7) The holder of the office must be *sui juris*.

It has to be judged in the light of the above characteristics whether an Istimrardar is the holder of an office of profit. According to Wilson's Glossary p. 345 an Istimrar is a farm or lease granted in perpetuity by the Government or Zamindar at a stipulated rate. An Istimrardar is the holder of a perpetual farm or lease. Under s. 20 Regulation II of 1877, an Istimrari estate means an estate in respect of which an Istimrari Sanad has been granted before the passing of the Regulation by the Chief Commissioner with the previous sanction of the Governor General in Council and Istimrardar means the person to whom such a Sanad has been granted or any other person who becomes entitled to the Istimrari estates in succession to him The status of an Istimrardar has, therefore, to be determined on the basis of the Sanad in his favour. The main terms and conditions of the Sanad are:—

I. "The Istimrardar shall at all times remain faithful in his allegiance to Her Majesty Queen Victoria, Her Heirs and Successors, and perform all the duties which, in virtue of such allegiance, may be demanded from him. If any question arises as to whether this condition has been faithfully observed, the decision thereon of the Governor General in Council shall be final.

IV. He shall, in accordance with custom, make reasonable provision for the support of such surviving relatives of his immediate predecessor as are hereinafter mentioned, and, in the event of any dispute arising as to such provision, shall conform without objection to the orders he may receive from the Chief Commissioner or other Principal Officer charged with the administration of Ajmer. The relatives above referred to are the following:—

Grand parents, parents, widows, brothers, sisters, sons, whether natural born or adopted, daughters, nephews, nieces and grand-children.

X He shall furnish to the Deputy Commissioner all statistics and information for which he, under the orders of Government, may call, and shall keep up such establishments as may be declared necessary for the preparation of such statistics, or for the supply of such information.

XI He shall report all crime occurring on his Estate, and assist in its detection, or repression, in such a way as he may be directed, he shall not harbour offenders within his Estates, and he shall use his best endeavours to preserve order and prevent crime, and whenever called on by the Officers of Government for assistance he shall render every aid and assistance in his power."

Particular stress is laid on condition that an Istimrardar will owe allegiance to Queen Victoria and her successors and the Governor General will be the final judge of whether an Istimrardar has been true to his allegiance. The mere fact that an Istimrardar under the Sanad owes allegiance to the Crown cannot, by itself, lead to the conclusion that he is an holder of an office of profit. Every citizen, in a way owes allegiance to the Crown who is now replaced by the Constitution of India. It is open to question if in view of the fundamental rights mentioned in the Constitution of India, allegiance can be demanded of an Istimrardar which cannot be demanded of any other citizen of the State.

Also the provision in the Sanad for providing maintenance to a certain class of relations does not make an Istimrardar an holder of an office of profit or detract in any manner from his status as an ordinary citizen. The provision is a necessary corollary to the mode of succession which is by rule of primogeniture. At the same time, it creates an obligation and does not confer a right on the Istimrardar. It is most significant that in the Sanad there is no condition for resuming the Estate and there has been no instance in which an Estate has been resumed. Thakur Gopalsingh, the old Istimrardar of Kharwa was detained under Regulation III of 1818 for his activities considered disloyal at that time but the Estate was not resumed and it was at his own instance that Thakur Gopalsingh abdicated the Estate in favour of his son. It clearly means that the Estate of an Istimrardar is not terminable as an office of profit is at the option of the Estate and also of its holder.

An "Istimrari Estate" does not carry any emoluments as an office of profit does. The contention of the petitioner is that an office of profit may have perquisites not essentially in the nature of salary and an Istimrardar has the largest perquisite in the shape of a fixed charge. The term "Istimrar" itself connotes a farm or lease in perpetuity at a fixed charge. That is no doubt a valuable perquisite inasmuch as the [illegible] is not liable to enhancement of charge but an Istimrari Estate is not an exception in this respect. There is permanent settlement in the whole of Bengal and in the eastern Districts of the U.P. Hence the mere fact that the Estate is held in perpetuity at a fixed charge does not make it an office of profit. Further reliance is placed on the provisions of Regulation II of 1877 relating to Istimrari Estates. S. 21 provides that all tenants in an Istimrari Estate shall be presumed to be tenants-at-will. Under s 22, an Istimrardar cannot alienate his Estate except for life S. 23 lays down the rule of succession and provides that no adoption made by a widow shall be deemed valid until confirmed by the Governor General in Council Under s. 24, any question as to the right to succeed to the Istimrari Estate arising in a case not provided for by s. 23 shall be decided by the Governor General in Council or by such officer as he may appoint in this behalf subject to the proviso that the Governor General in Council may grant a certificate declaring that the matter is one proper to be determined by a civil Court. S. 25 says that all claims for maintenance against an Istimrardar by any member of his family shall be preferred to the Chief Commissioner whose decision thereon shall be final. S. 27 confers on an Istimrardar the privilege of being tried for a criminal offence by the District Magistrate or Sessions Judge with the previous sanction of the Chief Commissioner. Under s 28, no Istimrardar can be arrested in execution of any process of any civil or revenue Court except with the previous sanction of the Chief Commissioner. And under s. 29 no decree for money against an Istimrardar can be executed after his death and no decree for money can be passed against any person as the representative of a deceased Istimrardar.

Certain privileges are, no doubt, attached to an Istimrari Estate, but neither singly nor collectively are they such as to make an Istimrari Estate an office of profit. It is not uncommon to find provisions in the old enactments laying down that the tenants of a particular Estate shall be tenants at will. Under s. 21, there is only a presumption that the tenants are at will. It does not mean that there cannot be tenants other than tenants at will. The provision relating to an adoption by a widow only places a disability on her and is by no means a characteristic of an office of profit. Similarly the provisions relating to succession and maintenance do not confer on an Istimrardar the status of a holder of an office of profit. The privilege conferred by s. 27 is inconsistent with the provisions of the Constitution of India and their validity is open to question. It is also doubtful if the provision really confers a privilege.

S. 28 does confer a privilege on an Istimrardar but women are entitled even to a greater privilege as they cannot be arrested at all in a decree for money. We are, therefore, of the opinion that none of the provisions in Regulation II of 1877 confers on an Istimrardar the status of the holder of an office of profit.

It is further pointed out that an Istimrardar has the privilege of distilling liqu without a license. Under s. 67 of Regulation I of 1915, the State Government empowered to confer this privilege on any person. It is not one of the privileges mentioned in the Sanad. It is further pointed out that an Istimrardar can keep arms without having to pay license fee. Under s. 27 Arms Act, the State Government can exempt any person from the license fee. It is also urged that an Istimrardar is under an obligation to provide force for the maintenance of law and order. Reliance in this connection is placed upon a circular dated 22nd November, 1951. Under s. 17 Police Act, the services of any person can be requisitioned to help in the maintenance of law and order. Similar duties are prescribed by ss. 42, 43 and 44 Cr. P.C. It is noteworthy that under the Scheduled Districts Act 1871, the Criminal Procedure Codes of 1861 and 1871 did not apply to the province of Ajmer. Some provisions peculiar to the province had, therefore, to be made for the maintenance of law and order and it was why a duty was cast on an Istimrardar to provide necessary force when so required. It will, thus, appear, that an Istimrardar lacks almost all the essential elements of a holder of an office of profit.

(1) He is not an appointee of the State. (All the present Istimrardars are by virtue of succession).

(2) He does not have the emoluments which the holder of an office of profit has. Indeed he gets no remuneration from the State Revenues.

(3) He holds the estate in perpetuity and not for a limited period.

(4) The estate is not terminable.

(5) The Estate is assignable at least for life (An office is never assignable)

(6) The Estate is heritable. (An office is seldom heritable).

(7) The holder of an Istimrari Estate may not be *sui-juris*.

All these characteristics materially distinguish an Istimrari Estate from an office of profit and it is impossible to hold that an Istimrardar is the holder of an office of profit.

It has been pointed out that an Istimrardar is absolutely subservient to the Government and the policy underlying Art. 102 of the Constitution is that all persons who are under subservience or tutelage to the government should be d qualified for the membership of a legislature. Subserviency or the so called tutela to the government is not a test of judging whether a particular person holds an office of profit as it is not possible to lay down any standard for judging the degree of subserviency. Art. 102 places a restriction on eligibility for election and must therefore be strictly interpreted and no office which does not satisfy the essential elements of an office of profit as commonly understood can fall under the scope of Art. 102.

Reliance has been placed upon the decision reported in the *Gazette Extraordinary* dated 23rd August 1952 in which Shrimati Hansa Mehta was held to be disqualified for election on the ground that as Vice-Chancellor of the University of Baroda she held an office of profit under Ar. 102 of the Constitution. She was appointed Vice-Chancellor by the State Government and held the office for a limited period. She was also removable by the State under certain circumstances. The decision has therefore no bearing on this case. Further reliance has been placed upon the decision of the Election Commission reported in the *Gazette of India Extraordinary*,

dated 2nd April 1953. That case also has no bearing as the members of the Legislative Assembly were the appointees of the State Government and as members of the District Advisory Council drew certain emoluments. On behalf of the respondent No. 1 reliance is placed upon the decision of the Cuttak Tribunal reported in the *Gazette Extraordinary*, dated 24th February 1953 in which it was held that a Sarbarekar was not a holder of an office of profit, although many of the incidents inconsistent with the position of an office holder are common to the Sarbarekar.

We are therefore of the opinion that the respondent No. 1 as an Istimrardar did not hold an office of profit and was not disqualified for the membership of the legislature and his nomination papers were not improperly accepted.

Issue No. 2.—At the time of final arguments this issue was not pressed on behalf of the contesting respondent. In fact the petitioner is a voter in his constituency.

Issue No. 3.—In view of the finding on issue No. 1 the petition is liable to be dismissed.

ORDER

The petition is accordingly dismissed with costs assessed at Rs. 250 payable to respondent No. 1.

(Sd.) J. D. SHARMA, *Chairman.*
(Sd.) C. JACOB, *Member.*
(Sd.) S. N. AGARWAL, *Member.*

AJMER;
The 22nd May 1953.

[No. 19/241/52-Elec.III/8734.]

S.R.O. 1198.—Whereas the election of Shri Murlidhar, as a member of the Legislative Assembly of the State of Madhya Bharat, from the Ghatigaon constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mahesh Datta, son of Shri Balwant Parshad Mishra, Village Barai, P.O. Barai (Gird), Pargana and District Gird. Madhya Bharat;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, GWALIOR, MADHYA BHARAT

ELECTION PETITION No. 101 OF 1952

Election Petition under Section 80 of the Representation of the Peoples Act, 1951 (Act XLIII of 1951).

Mahesh Datta s/o Balwant Parshad Mishra, Brahman by caste, resident of Village Barai, Post Office Barai (Gird), Pargana and District Gird. Madhya Bharat—*Petitioner.*

Vs.

1. Murlidhar s/o Vishvanath Ghule Brahmin by caste, resident of Janakganj, Lashkar.
2. Mangeshrao s/o Govindrao, Vakil Janakganj, Lashkar.
3. Harishankar Dwivedi, Janakganj, Lashbar.
4. Vishnudatt Tiwari, Resident of Deedwana Oli, Lashkar.
5. Lalluram, P.O. Dabra.
6. Shivdatta Mishra, P.O. Barai (Gird).
7. Madan Gopal Agrawal, P.O. Dabra.
8. Harcharan Lal, Village Chhimak.

9. Nand Kishore s/o Brij Bhushan, Brahman by caste, Resident of Village Dourar, Pergana Ghatigaon, Distt. Gird.

10. Deoki Nandan s/o Balmukund, Brahman by caste, Resident of Village Renhat, Pergana Ghatigaon, Distt. Gird.

11. Narayan Singh P.O. Bhiterwar—*Respondents*.

FOR PETITIONER:

Mr. Joyti Prasad Upadhyay, B.A., LL.B., Advocate.

Mr. Puttu Lal Dube, M A., LL.B., Advocate.

Mr. Shejwalkar, B.A., LL.B., Advocate.

Mr. Anand Bihari Mishra, B.A., LL.B., Advocate.

FOR RESPONDENT No. 1:

Mr. G. P Patankar, M.A., LL.B., Advocate.

Mr. V. K. Sapre, B.A., LL.B., Advocate.

JUDGMENT

This is an election petition under section 80 of the Representation of Peoples Act, 1951, by Shri Mahesh Datta Mishra challenging the election of Shri Murlidhar Ghule, respondent No. 1. The petitioner was one of the duly nominated candidates for the election of Ghatigaon Constituency No. 64 of the Madhya Bharat Legislative Assembly. He received six thousand three hundred forty eight votes, whereas Respondent No. 1, secured six thousand seven hundred sixty three votes and was declared duly elected. The petitioner has challenged the election on the following grounds:

(a) That the nomination papers of Harcharan Lal (Respondent No. 8); Nand Kishore (Respondent No. 9); Deoki Nandan (Respondent No. 10); and Narayan Singh (Respondent No. 11) have been improperly rejected on the ground that they were Patels; and the result of the election has been materially affected by this improper rejection.

(b) No list of village Kota Pargana Lashkar was prepared nor was any polling fixed for the votes of the said village.

(c) A large number of voters were refused voting as supplementary Lists were not kept on certain polling stations (*Vide* Chart A). The list of village Manpura was also missing at the Kara Polling Station.

(d) Corrupt practices as described in Chart C were practised.

(e) The return of election expenses filed by Respondent No. 1 is not in order and is open to objection.

(f) The design and the construction of the ballot boxes was not in accordance with the requirements of the Rules under Act No. XLIII of 1951.

Respondent Nos. 3, 8 and 9 submitted written statements and admitted the allegation made by the petitioner. The only contesting respondent is Shri Murlidhar Ghule respondent No. 1. Besides denying or not admitting most of the allegations made by the petitioner the respondent No. 1 has taken an additional plea that the petitioner is estopped from attacking the validity of the election on the ground of the rejection of the nomination papers because it was on the objection of the petitioner himself that the Returning Officer had rejected the nomination papers of Respondent Nos 8, 9, 10 and 11.

The following issues were framed:—

1. Whether the nomination papers of respondent Nos. 8, 9, 10 and 11 have been improperly rejected as mentioned in Para 6(a) of the petition and whether this has materially affected the result of the election?

2. (a) Was no list of village Kota Lashkar Pargana Gird prepared, nor any polling station fixed for the said village as alleged in Para 6(c) of the petition. If so, what is its effect?

(b) Could this objection be raised before the Tribunal?

3. Whether voters were refused voting as no supplementary lists were kept pertaining to Polling Stations mentioned in list (A) and the original list of Manpur (Karai) was also missing. What is the effect on Election?

4. Was corrupt practice as mentioned in para 6(c) committed by respondent No. 1? If so, what is the effect on the result of the Election?

5. Was the make up of the ballot boxes used, not in accordance with the requirements of the Rules under Act No. 43 of 1951?

6 Has the petitioner not given any particulars of the corrupt practices as required by section 83(2) of the R.P. Act 1951?

7. Is the petitioner estopped from attacking the validity of the election on the ground of improper rejection of nomination papers as mentioned in para 1 of additional pleas of the written statement of respondent No. 1?

8 Are the provisions of section 83(1) of R.P. Act not complied with? What is the effect?

9. To what relief is the petitioner entitled?

Issues Nos. 2(b), 6 and 8 have been decided by our order dated 24th December, 1951 (Annexure A.) In view of our decision regarding issues Nos. 2(b) and 6, issues Nos. 2(a) and 4 have become unnecessary. The learned Counsel for the petitioner did not press issues Nos. 3 and 5 hence only issues Nos. 1 and 7 are left for consideration.

Issue No. 1.—The main facts relating to this issue are that the Madhya Bharat Zamindari Abolition Act Samvat 2008 came into force on 25th June 1951 and in pursuance of sub-section 3 of the said Act, the Government of Madhya Bharat specified 2nd October, 1951 as the date on which all proprietary rights affected by the said Act were to pass and vest in the State of Madhya Bharat [*Vide* M. B. Gazette, dated 7th September 1951 notification No. 5710/IX D.A./B-25(50) Section 42 of the Madhya Bharat Zamindari Abolition Act, Samvat 2008] provides that on and from the date of vesting every Lambardar shall cease to act and the Suba shall in accordance with the rules made in this behalf appoint a person as Patel for each village. In exercise of the powers conferred under section 58(2) (g) of the M.B. Zamindari Abolition Act, Patel Appointment Rules were promulgated on 28th July, 1951. Under rule 5 of the said rules the Tahsildar has to nominate a Patel for every village and under rule 6 the list of names of the persons nominated as patels is to be forwarded to the Collector of the district for sanction of the appointments. The rule also requires that such appointment shall be notified in the Government Gazette. In accordance with the procedure laid down in the Patel Appointment Rules, the Collector of Gwallor sanctioned the appointments of Patels and published the list in the Madhya Bharat Gazette dated 2nd September 1951. In the headings of the lists of each pargana, it is mentioned that the following persons are appointed as patels from 2nd of October 1951 for one year. The names of Harcharan Lal Respondent No. 8, Nand Kishore Respondent No. 9, Deokinandan Respondent No. 10 and Narayan Singh Respondent No. 11 appear in the list on Serial Nos. 68, 55, 117 and 124 on pages 621, 628 and 629.

The main contention of the learned Counsel for the petitioner is that mere notification in the Gazette is not sufficient to disqualify a person under Article 101(1) of the Constitution of India, and merely on the basis of such appointment, it cannot be said that the four respondents named above held the office of Patel at the time of filing the nomination papers. It is further argued on behalf of the petitioner that these four respondents never applied for Patelship, they did not accept it, nor did they take charge of the office.

The Patel Appointment Rules do not require the taking of a prior consent of the persons nominated as Patels, nor do they require that after appointment the persons appointed shall give in writing their acceptance. In the present case the petitioner has examined Nand Kishore (respondent No. 9) Deokinandan (respondent No. 10) and Harcharan Lal (respondent No. 8). Deokinandan has said in his cross examination that he thinks that he gave an application for becoming a Patel. Harcharan Lal has admitted that before the filing of the nomination paper he was informed of his appointment as Patel through a Chaprasi. Nandkishore has denied getting any information before the date of scrutiny, but even under his signature on the order of rejection of nomination paper he has been careful to write the word Patel, which shows his mind and indicates that he knew that he was a Patel. Besides, from his cross examination it appears that at the time of scrutiny he did not give any reply in writing regarding the objection made against him. The burden of proof that Narayan Singh (respondent No 9) was not a Patel on the date of filing the nomination paper lay on the petitioner, but he did not give any evidence on this point, as he has done in respect of the other three respondents (Nos. 8, 9, and 10). The fact that Narayan Singh was not exmained by the petitioner raises a presumption under section 114 of

the Indian Evidence Act that if Narayan Singh had been examined he like others would not have been favourable to the petitioner. From the evidence given by the respondent No. 1, it appears that Narayan Singh and Nand Kishore were intimated about their appointment before the filing of nomination papers and Ex. A-4 and A-5 bear their signatures.

From the file of the nomination papers, it appears that the nomination papers of Narayan Singh and Deoki Nandan were rejected on two grounds; one of them being regarding patelship and the other ground on which their nomination papers were rejected was that they were not properly filled in. This second point has not been made a ground of attack in the petition, therefore the cases of these two respondents do not help the petitioner.

From the whole of the evidence before us, it is quite clear that all the four respondents 8, 9, 10 and 11 were appointed as patels by the Collector from 2nd October 1951, their names were published in the Madhya Bharat Government Gazette and all of them were personally informed long before the filing of the nomination papers. The date for filing the nomination paper being 20th November, 1951. Once the appointment of these persons as patels was made known to them, it lay on them to show their unwillingness or to tender their resignations to the proper authority *i.e.* the Collector; but none of the four respondents has taken any steps to do that. On the contrary, from the evidence produced by the respondent, it is quite clear that these four persons actually worked as patels later on and received remuneration for the year. All the facts mentioned above and the conduct of respondents clearly amount to implied acceptance of patelship. Hence in our view, the following references relied on by Mr. Jyoti Prasad the learned Counsel for the petitioner *viz* Halsbury's Laws of England 3rd edition Volume I para. 350, 351, 364 Law of Election by Khanna page 90; Law of Elections by Jagat Narayan page 244, 248. Roger's on Election Volume II page 20, do not help the petitioner. A.I.R. 1918 Sindh page 1 is not applicable to the present case as it is case under section 186 of the Indian Contract Act.

It is argued by the learned Counsel for the petitioner that on a petition for a writ of mandamus, the Hon'ble High Court of Madhya Bharat passed an interim injunction on 1st October 1951. In the face of this injunction, the respondents whose nomination papers have been rejected could not hold the office of patel.

The injunction is in the following words:—

"We, therefore, direct the Government to forbear, until the disposal of the petitions impeaching the vires of the Zamindari Abolition Act, from taking actual possession of the lands mentioned in section 6 of the said Act and from enforcing the provisions of the said Act, in a manner other than that of an issue of a proclamation by or on behalf of the Collector on 2nd October 1951, in terms of the form of proclamation attached to the undertaking of the Government given on 1st October, 1951." From this the order as well as from the letter issued by the Revenue Secretary dated 9th October 1951 (Ex-1), it is quite clear that the High Court order does not affect the appointment of Patels already made. The only purpose of the High Court order appears to be to maintain *status quo* and as such the letter Ex. 1 asked the patels not to work as patels but they were asked to make certain reports. If the idea behind this letter was to cancel the appointment of patels they could not have been asked to make reports too.

From the whole material before us, we are clearly of opinion that persons already appointed as Patels did not cease to be patels on account of the High Court order dated 1st October 1951, but only certain restrictions were placed on the scope of their work. The learned Counsel for the petitioner has drawn our attention to the decision in Election petition No. 92 of 52 of the Election Tribunal Indore. We are unable to agree with the view taken by the Indore Tribunal, that in view of the High Court order, there was no office of patel which could be held. Our view is that when the vesting had taken place and the appointments of patels were duly made before the High Court order, the persons appointed could hold that office, though they may not have any work to do for the time being or the scope of their duties was restricted. The decision in Election Petition No. 221 of 52 of this Tribunal is not applicable to the facts of this case.

Under Article 191(1) (a) of the Constitution of India, a person shall be disqualified .. .. if he holds any office of profit under the Government. In view of Rule of the Patel Appointment Rules, it is evident that the office of patel is certainly an office of profit, as patels are entitled to a remuneration of 3-1/8 per cent. of the land revenue realised. It has been held so in Election Petition Nos. 92 of 1952 and 221 of 52.

Considering the whole material before us, we are definitely of opinion, that all the four respondents Nos. 8, 9, 10 and 11 held the office of patel which is an office of profit on the date of filing of the nomination papers and as such their nomination papers were rightly rejected. Hence we decide issue No. 1 against the petitioner.

Issue No. 7.—In paragraph No. 1 of the additional pleas of the written statement allegation has been made that the petitioner on the date of the scrutiny asserted that one of the candidates whose nomination paper was rejected was a patel and having obtained an order of rejection of the Returning Officer on this ground, he is estopped from denying the fact that respondents Nos. 8, 9, 10 and 11 were patels and thus he can not challenge the election to be void on this ground. The learned counsel for respondent No 1 has taken us through various rulings of different High Courts on the principles of estoppel which are cited as given below:—

A.I.R. 1924 Calcutta, 600; A.I.R 1946 Allahabad 436; A.I.R, 1930 Allahabad 15, 1930 Calcutta 32; 1922 Calcutta 114; 1916 Madras 745; 1939 Lahore 63; 1934 Bombay 329.

The rule of estoppel is founded on the doctrine laid down in Pickared *Vs.* Sears (1837) 6A and E 469 (474) that where a person by his words or conduct wilfully causes another to believe the existence of certain state of things and induces him to act on that belief so as to alter his own previous position, the former is precluded from averring against the latter, a different state of things as existing at the same time. The law in India is the same as enunciated in the Privy Council case of Sarat Chandra Roy *Vs.* Gopal Chandra Laha (19 I.A. 203) and embodied in section 115 of the I.E. Act. The doctrine is not a rule of equity but a rule of evidence. Mr. Patankar's whole arguments rest on the ground that the petitioner should not be allowed to approbate and reprobate. We respectfully agree with the principles set up on the question of estoppel by various High Courts in the rulings cited before us but there arises no question of estoppel or principle of approbation and reprobation in the present case as we are not inclined to apply these principles in election disputes. It must be borne in mind that the proper conduct of the elections is a matter of concern for the entire electorate and nothing should be allowed to impair the right of every voter to question the validity of election before the Tribunal. If such a right vests in every voter, how can then the petitioner be denied a hearing on that ground, so we hold that the question of estoppel does not arise in this case and this issue is answered accordingly.

As a result of our finding on issue No. 1 the petition is liable to be dismissed with appropriate costs.

ORDER

It is hereby ordered that the election petition is dismissed. The petitioner shall bear his own costs and shall pay respondent No. 1 Shri Murlidhar Ghule Rs. 350 (including pleader fee Rs. 250 and Rs 106 as half the amount of other expenses) as his costs. Dated 1st June, 1953.

(Sd.) V. K. DONGRE, *Chairman.*
(Sd.) BHAGWAN SWAROOP, *Member.*
(Sd.) SURAJ BHAN, *Member.*

Annexure 'A'

ORDER

We have heard Mr. Mishra for the petitioner and Mr. Patankar for the respondent No 1 with respect to issue No. 2(b) 6 and 8.

Issue No. 2(b).—The objection of the petitioner is that no list of village Kota Lashkar Pargana Gird was prepared nor any polling station fixed for the voters of the said village which clearly is non-compliance of the Constitution of India and the R.P. Act 1950 and 1951, thus a good number of petitioner's voters have been deprived of voting. The point for consideration is whether the objection regarding the electoral roll could be raised before this Tribunal. Mr. Mishra's contention is that no draft list of electors for Kota village was published so the question of making claims and objections by the residents of the village did not arise. In the course of his argument Mr. Mishra has said that electoral rolls were prepared and published separately for each village and no such electoral roll was

prepared for village Kota and hence the residents of Kota were quite in the dark about the preparation of electoral roll. Rule 7 of the Rules under R.P. Act of 1950 (regarding preparation of Electoral rolls) says 'The Electoral Registration Officer may divide a Constituency into Electoral areas for the purpose of facilitating the preparation of the Electoral Roll for the Constituency and so much of the roll as relates to an electoral area may be separately prepared. In the petition it is not alleged that Ghatigaon Constituency was divided into Election areas and village Kota was thus a separate electoral area and as such no draft electoral roll was made, hence in our view, the petitioner is not entitled to raise the new plea in the course of argument.

Mr. Mishra's argument appear to be based on the idea that persons entitled to vote have no part to play in the course of preparation of electoral roll and they choose. As a vague reference is made to the Indian Constitution in para 6(c) of the petition. We think it necessary to deal with rights of voters.

According to article 326 of the Constitution of India every person who is a citizen of India and who is not less than 21 years of age on such date as may be fixed in that behalf..... .. .. shall be entitled to be registered as a voter at the election to the House of the People and the Legislative Assembly of every State; and under section 62 of R.P. Act no person who is not and every person who is for the time being entered in the electoral roll of any Constituency shall be entitled to vote in that constituency. Article 327 gives power to the Parliament to make provisions with respect to all matters relating to elections including the preparation of electoral rolls, the determination of Constituencies etc.

The Parliament enacted the R.P. Act of 1950 and under section 28 of the said Act rules were made which include rules for preparation of Electoral rolls also.

Rule 3 says there shall be prepared for every Constituency an electoral roll in which shall be included the names of all persons entitled to be registered therein. It shall be published in the Constituency together with a notice specifying the mode in which and the time within which claims for inclusion in the roll or objections to any names or particulars entered in the roll are to be preferred. Under Rule 9, the draft electoral roll is published and under rule 10 a notice is published calling upon persons claiming to be entered on the roll to lodge their claims in the prescribed manner. After the claims and objections are decided the final electoral roll is published under rule 19. Even after the final publication of Electoral Roll any person whose name is not included in the electoral roll of a constituency and who is entitled to be registered therein has a remedy open by applying to the Election Commission under Rule 20.

Thus we see that the Constitution of India only gives an adult citizen of India who is not otherwise disqualified a right to be registered as a voter. Under the rules, framed under the R.P. Act, provision is made for every such citizen to get his name included in the electoral roll. If some people do not avail of this opportunity it cannot be said that there has been an infringement of the provisions of the Constitution or people have been deprived of their right of voting. When there was no voter from Kota the question of having a Polling Station for it does not arise.

Mr. Mishra has relied on D.E.C. page 24 (Nawabser K.G.M. Farogue *versus* Maulvi Mohammad Habibulla and others). In this case it is held that the Election Tribunal can go behind Electoral roll and investigate the question of want of qualification of a candidate. It is further held that the Electoral roll is binding as far as the qualifications of a voter are concerned both on the returning officer and the Tribunal but not binding on the Tribunal as far as qualifications of a candidate are concerned. Then we see that in this case it has been held that Election Tribunal can go behind the Electoral roll for the limited purpose of going through the question of the qualifications of a candidate. This view is probably due to the words 'or by reason of the fact that any person nominated was not qualified or was qualified for election in section 7(1) (c) of Part III of the Corrupt Practices Order of 1936 of the Government of India.

Mr. Patankar has cited D.E.C. Vol. I page 127 (Hari Shankar Bacha *versus* Kishan Chand and others), D.E.C. Vol. I page 111 (Mr. Mohanlal Mandal *versus* Rudralal Dass and others), D.E.C. Vol. I page 259 (Mr. S. R. Lewis *versus* Mr. C, E. Gibbon). D.E.C. Vol. II page 106 (Mr. H. H. J. Mall and others *versus* H. G. Walford).

We have carefully gone through all the cases cited on behalf of both the parties. The view has consistently been in favour of the finality of Electoral Roll. Our considered opinion is that the Electoral Roll is prepared according to the procedure

laid down in rules framed under the R.P. Act, which are exhaustive and contain provisions for preparation, revision and publication of electoral roll. Every person who is anxious to exercise his right as a voter has sufficient opportunity to have his name included in it. If some persons ignore to take steps at the proper time it is their fault.

Hence in our view we cannot go behind the electoral roll as the petitioner wants us to go. We decide issue No. 2(b) against the petitioner.

Issue No. 6.—The objection of the respondent is that the petitioner has not given full or any particulars regarding the corrupt practice mentioned in paras. 6(e) of the petition. The said para. is in these words 'The corrupt practices as described in chart (c) were practised by the elected candidate respondent No. 1. The statement 'C' is in the following words:—

> "Respondent No. 1 obtained and procured the services of Sri Rambharose Patsala son of Shri Murlidhar Patsala resident of village Barai who is an employee of the Government of Madhya Bharat State and sought his assistance for the furtherance of his election."

From the contents it is quite clear that except mentioning the name of Rambharose the petitioner has not given full or any particulars of the corrupt practice vaguely alleged in the petition. We have no hesitation to say that the petitioner of para 6(e) hence we decide issue No. 6 in favour of the respondent.

Issue No. 8.—There are two objections regarding this issue that (1) there is non-compliance of sub-section (1) of section 83 of R.P. Act and (2) Effect of the non-compliances should be that the petition be dismissed under sub-section 4 of section 90 of the R.P. Act.

As regards the first objection Mr. Patankar has said that under sub-section 1 of section 83 R.P. Act an election petition should contain a concise statement of the material facts on which the petitioner relies, but in para. 6(a) of the petition the petitioner has not clearly said that 4 respondents referred to were not Patels. Whatever he has said is in a round about way, which is not concise. In para. 6(b)(c)(d) there are not sufficient material facts and in (e) and (f) there are no material facts mentioned at all. We have carefully gone through para. 6 of the petition and our view is that sub-paras. (a), (b), (c) and (d) contain a concise statement of material facts as required by sub-section 1 of section 83 of R.P. Act. The remaining two sub-paras. are as follows:—

> (e) that corrupt practices as described in chart 'C' were practised by the elected candidate respondent No. 1.
>
> (f) that the return of election expenses filed by respondent No. 1 is not in order and is open to objection.

There is no doubt that the above two sub-paras clearly do not contain any material facts as required by sub-section 11 of section 83 R.P. Act; and even Mr. Mishra has no hesitation to say that sub-para (f) lacks in material facts. We are of opinion that so far as para. 6(e) and (f) of the petition are concerned the petitioner has not complied with the provisions of section 83(1) of the R.P. Act.

Regarding the effect of non-compliance of sub-section 1 of section 83 R.P. Act Mr. Patankar's contention is that the petition should be dismissed under sub-section. 4 of section 90 of the R. P. Act. Mr. Patankar has argued that though the word used in sub-section 4 is 'may' it is to be interpreted as mandatory. Mr. Patankar has quoted extracts from Maxwell on interpretation of Statutes 9th edition page 250 Craies on Statute Law page 264, Crawford on Construction of Statutes page 534 and has cited A.I.R. 1927 Bombay 209, 1931 Patna 1, 1937 Madras 51, 1933 Sind 9, 1950 Supreme Court, 222. We have gone through the whole material put before us and as observed in 1931 Patna 1 our view is, that though the word 'may' under circumstances may have a compulsory force the intention of the Legislature is to be seen from the context. In this connection what Lord Selborne has said in a speech in Jullias *versus* Bishop of Oxford may be quoted. 'The question whether a Judge or a public officer to whom a power given by such words, is bound to use it upon any particular occasion or in any particular manner, must be solved aliunde and in general it is to be solved from the context, from the particulars, provisions or from the general scopes and objects of the enactment conferring the power'.

In the representation of Peoples Act, 1951 there are two provisions under which a petition could be dismissed for non-compliances of section 83 of R.P. Act. The first is under section 85. In this section the power is given to the

Election Commission and the word used is 'shall'. The second provision is under sub-section 4 of section 90 by which power is given to the Tribunal to dismiss the petition. In this sub-section the word used is 'may', we cannot think that in the same enactment the legislature could use two words 'shall' and 'may' to mean the same thing. Besides this the Tribunal has power under sub-section 3 of section 83 R.P. Act to allow amendment to a certain extent in respect of non-compliances of sub-section 2 of section 81. Under section 81 R.P. Act an election petition can be on one or more grounds and there is no warrant for the principle that failure of a party on one aspect of the case should shut out other grounds of attack. Under the circumstances, we do not think that word 'may' in sub-section 4 of section 90 means 'must' or has a mandatory significance. Our view is that section 90(4) R.P. Act is permissible and it is supported by the decision in Election Petition No. 83 of 1952 published in the Gazette of India Extraordinary dated the 10th October, 1952, in which the Tribunal has observed that it has under section 90(4) a discretion in the matter of dismissing a petition or not for the non-compliance of the provisions of section 83 of the R.P. Act.

We do not think it proper to dismiss the petition under section 90(4) for non-compliance of sub-section 1 of section 83 in respect of para. 6(e) and (f) of the petition.

As para. 6(e) and (f) lack in material facts the petitioner will not be allowed to lead evidence regarding these two allegations and we strike off issue No. 4. With respect to para. No. 6(e) and (f) part first of issue No. 6 is therefore decided in favour of the respondent.

(Sd.) V. K. DONGRE, *Chairman.*
(Sd.) SURAJ BHAN, *Member.*
(Sd.) BHAGWAN SWAROOP, *Member.*

The 24th December, 1952.

[No. 19/101/52-Elec.III/8736]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

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